

HOUSE BILL No. 1192

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-15-2-35; IC 5-10-8.

Synopsis: State employment and compensation. Provides an optional arbitration procedure for state employee grievances. Specifies a grievance procedure for teachers who are state employees. Requires the state to provide a group health insurance program to each retired teacher who was a state employee, who was at least 55 years of age at retirement, and who participated in the employee's retirement fund: (1) for 15 years; or (2) for at least ten years immediately preceding retirement.

Effective: July 1, 2004.

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January 13, 2004, read first time and referred to Committee on Labor and Employment.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1192

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-2-35 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 35. **(a)** Any regular
3 employee may file a complaint if ~~his~~ **the employee's** status of
4 employment is involuntarily changed or if ~~he~~ **the employee** deems
5 conditions of employment to be unsatisfactory. However, the complaint
6 procedure shall be initiated as soon as possible after the occurrence of a
7 the act or condition complained of and in no event shall be initiated
8 more than thirty (30) calendar days after the employee is notified of a
9 change in ~~his~~ **the employee's** status of employment or after an
10 unsatisfactory condition of employment is created. Failure to initiate
11 the complaint procedure within such time period shall render the
12 complaint procedure unavailable to the employee. The following
13 complaint procedure shall be followed:
14 Step I: The complaint procedure shall be initiated by a discussion
15 of the complaint by the employee and ~~his~~ **the employee's**
16 immediate supervisor and, if a mutually satisfactory settlement
17 has not been made within two (2) consecutive working days, ~~such~~



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1 **the** complaint may be referred to Step II.

2 Step II: The complaint shall be reduced to writing and presented
3 to the intermediate supervisor. If a mutually satisfactory
4 settlement has not been reached within four (4) consecutive
5 working days, ~~such~~ **the** complaint may then be referred to the
6 appointing authority.

7 Step III: The appointing authority or ~~his~~ **the appointing**
8 **authority's** designated representative shall hold ~~such~~ **the**
9 hearings and conduct ~~such~~ **the** investigations ~~as he~~ **the**
10 **appointing authority** deems necessary to render a decision and
11 shall make ~~such~~ **a** decision in writing within ten (10) consecutive
12 working days.

13 **Step IV:** Should the appointing authority or ~~his~~ **the appointing**
14 **authority's** designated representative not find in favor of the
15 employee, the complaint may be submitted within fifteen (15)
16 calendar days to the state personnel director. The director or ~~his~~
17 **the director's** designee shall review the complaint and render a
18 decision within fifteen (15) calendar days. If the decision is not
19 agreeable to the employee, an appeal may be submitted by the
20 employee in writing **either** to the commission **or to arbitration**
21 no later than fifteen (15) calendar days from the date the
22 employee has been given notice of the action taken by the
23 personnel director or ~~his~~ **the director's** designee.

24 ~~After submission of the appeal;~~ **Step V: (A) If an employee**
25 **elects to submit the appeal to the commission,** the commission
26 shall, prior to rendering its decision, grant the appealing employee
27 and the appointing authority a public hearing, with the right to be
28 represented and to present evidence. With respect to all appeals,
29 the commission shall render its decision within thirty (30) days
30 after the date of the hearing on the appeal. If the commission finds
31 that the action against the employee was taken on the basis of
32 politics, religion, sex, age, race or because of membership in an
33 employee organization, the employee shall be reinstated to ~~his~~ **the**
34 **employee's** position without loss of pay. In all other cases, **unless**
35 **judicial review of the decision is requested in accordance with**
36 **IC 4-21.5-5,** the appointing authority shall follow the
37 ~~recommendation~~ **decision** of the commission, which may include
38 reinstatement and payment of salary or wages lost by the
39 employee, which may be mitigated by any wages the employee
40 earned from other employment during a dismissed or suspended
41 period.

42 ~~If the recommendation of the commission is not agreeable to the~~

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employee; the employee, within fifteen (15) calendar days from receipt of the commission recommendation; may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations; and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

Step V: (B) If an employee elects to submit the appeal to arbitration, an arbitrator must be selected from:

- (i) the American Arbitration Association; or**
- (ii) the Federal Mediation and Conciliation Service, if an arbitrator is not available from the American Arbitration Association;**

according to selection procedures established by the arbitrator's association or service. The costs of arbitration under this Step shall be shared equally by the employer and the employee or the employee's representative.

Step VI: The decision of the commission under Step V(A) or the arbitrator under Step V(B) is a final order subject to judicial review in accordance with IC 4-21.5-5. The commission's or arbitrator's decision in Step V is binding unless a party requests judicial review.

(b) An employee who files a complaint under subsection (a) may choose a representative who is inside or outside of the employee's agency or facility to represent the employee during Steps III through VI of the complaint procedure.

(c) If the employer does not comply with the timelines set forth in subsection (a) at a particular Step of the complaint procedure, the employee's complaint proceeds to the next Step of the complaint procedure.

(d) Subsections (e) through (k) apply to an individual who is employed as a teacher in a state institution under:

- (1) IC 11-10-5;**
- (2) IC 12-24-3;**
- (3) IC 16-33-3;**
- (4) IC 16-33-4;**
- (5) IC 20-15; or**
- (6) IC 20-16.**

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(e) Instead of the grievance procedure set forth in subsections (a) through (c), the grievance procedure established by subsections (f) through (k) applies to a teacher described in subsection (d).

(f) If a teacher wishes to file a grievance concerning an action taken by the teacher's employer, the grievance must be filed according to the following procedure:

(1) The teacher may file a grievance with the teacher's immediate supervisor not more than thirty (30) working days after the action taken by the employer occurs.

(2) The immediate supervisor shall respond to a grievance filed under subdivision (1) not more than two (2) working days after the immediate supervisor receives the grievance.

(3) If the teacher is dissatisfied with the response under subdivision (2), the teacher may file a written grievance with the teacher's intermediate supervisor.

(4) The intermediate supervisor shall respond to a written grievance filed under subdivision (3) not more than four (4) working days after the intermediate supervisor receives the written grievance.

(5) If the teacher is dissatisfied with the response under subdivision (4), the teacher may file a written grievance with the superintendent of the institution in which the teacher is employed.

(6) The superintendent shall respond to a written grievance filed under subdivision (5) not more than ten (10) working days after the superintendent receives the written grievance.

(7) If the teacher is dissatisfied with the response under subdivision (6), the teacher may file a written grievance with the state personnel director appointed under IC 4-15-1.8-3 not more than fifteen (15) working days after the teacher receives the response under subdivision (6).

(8) The state personnel director shall respond to a written grievance filed under subdivision (7) not more than fifteen (15) working days after the state personnel director receives the written grievance.

(9) If the teacher is dissatisfied with the response under subdivision (8), the teacher may:

(A) file a written grievance with the state employees' appeals commission under 33 IAC 1 not more than fifteen (15) working days after the teacher receives the response under subdivision (8); or

(B) submit the grievance directly to arbitration under

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- 1 subdivision (12).
 2 (10) The state employees' appeals commission shall set a date
 3 for a hearing on the written grievance filed under subdivision
 4 (9). The hearing date may not be more than thirty (30)
 5 working days after the state employees' appeals commission
 6 receives the written grievance. The state employees' appeals
 7 commission shall render a decision not more than thirty (30)
 8 working days after the date of the hearing, unless this period
 9 is extended by the written consent of all parties.
 10 (11) If the teacher is dissatisfied with the decision rendered
 11 under subdivision (10), the teacher may submit the grievance
 12 to arbitration not more than fifteen (15) working days after
 13 the teacher receives the decision under subdivision (10).
 14 (12) The arbitrator to whom the grievance is submitted under
 15 subdivision (9) or (11) shall hold a hearing and shall render a
 16 decision not more than thirty (30) working days after the
 17 hearing.
 18 (g) An arbitrator to whom a grievance is submitted under
 19 subsection (f)(9) or (f)(11) must be selected from:
 20 (1) the American Arbitration Association; or
 21 (2) the Federal Mediation and Conciliation Service, if an
 22 arbitrator is not available from the American Arbitration
 23 Association;
 24 according to selection procedures established by the arbitrator's
 25 association or service.
 26 (h) Costs of arbitration under subsections (f) through (k) shall
 27 be shared equally by:
 28 (1) the employer; and
 29 (2) the teacher or the teacher's organization.
 30 (i) If the employer does not comply with the timelines set forth
 31 in subsection (f) at a particular Step of the procedure, the
 32 grievance proceeds to the next step of the procedure.
 33 (j) A teacher who files a grievance under subsections (f) through
 34 (k) may choose a representative from inside or outside the
 35 institution to represent the teacher in subsection (f)(5) through
 36 (f)(12) of the grievance procedure under subsections (f) through
 37 (k).
 38 (k) The decision of the arbitrator is a final order subject to
 39 judicial review in accordance with IC 4-21.5-5.
 40 SECTION 2. IC 5-10-8-6.5, AS ADDED BY P.L.233-1999,
 41 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 42 JULY 1, 2004]: Sec. 6.5. (a) A member of the general assembly may

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elect to participate in either:

- (1) the plan of self-insurance established by the state police department under section 6 of this chapter;
- (2) the plan of self-insurance established by the state personnel department under section 7 of this chapter; or
- (3) a prepaid health care delivery plan established under section 7 of this chapter.

(b) A former member of the general assembly who meets the criteria for participation in a group health insurance program provided under ~~section 8(e)~~ **section 8** or 8.1 of this chapter may elect to participate in either:

- (1) the plan of self-insurance established by the state police department under section 6 of this chapter; or
- (2) a group health insurance program provided under ~~section 8(e)~~ **section 8** or 8.1 of this chapter.

(c) A member of the general assembly or former member of the general assembly who chooses a plan described in subsection (a)(1) or (b)(1) shall pay any amount of both the employer and the employee share of the cost of the coverage that exceeds the cost of the coverage under the new traditional plan.

SECTION 3. IC 5-10-8-8, AS AMENDED BY P.L.13-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) This section applies only to the state and employees who are not covered by a plan established under section 6 of this chapter.

(b) ~~After June 30, 1986, Except as provided in subsection (k),~~ the state shall provide a group health insurance plan to each retired employee:

- (1) whose retirement date is:
 - (A) after June 29, 1986, for a retired employee who was a member of the field examiners' retirement fund;
 - (B) after May 31, 1986, for a retired employee who was a member of the Indiana state teachers' retirement fund; or
 - (C) after June 30, 1986, for a retired employee not covered by clause (A) or (B);
- (2) who will have reached fifty-five (55) years of age on or before the employee's retirement date but who will not be eligible on that date for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; **and**
- (3) who will have completed:
 - (A) **before January 1, 2005**, twenty (20) years; **or**
 - (B) **after December 31, 2004**, **fifteen (15) years**;

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1 of creditable employment with a public employer on or before the
 2 employee's retirement date, ten (10) years of which shall have
 3 been completed immediately preceding the retirement. ~~and~~
 4 ~~(4) who will have completed at least fifteen (15) years of~~
 5 ~~participation in the retirement plan of which the employee is a~~
 6 ~~member on or before the employee's retirement date.~~

7 (c) The state shall provide a group health insurance program to each
 8 retired employee:

- 9 (1) who is a retired judge;
- 10 (2) whose retirement date is after June 30, 1990;
- 11 (3) who is at least sixty-two (62) years of age;
- 12 (4) who is not eligible for Medicare coverage as prescribed by 42
- 13 U.S.C. 1395 et seq.; and
- 14 (5) who has at least eight (8) years of service credit as a
- 15 participant in the Indiana judges' retirement fund, with at least
- 16 eight (8) years of that service credit completed immediately
- 17 preceding the judge's retirement.

18 (d) The state shall provide a group health insurance program to each
 19 retired employee:

- 20 (1) who is a retired participant under the prosecuting attorneys'
- 21 retirement fund;
- 22 (2) whose retirement date is after January 1, 1990;
- 23 (3) who is at least sixty-two (62) years of age;
- 24 (4) who is not eligible for Medicare coverage as prescribed by 42
- 25 U.S.C. 1395 et seq.; and
- 26 (5) who has at least ten (10) years of service credit as a participant
- 27 in the prosecuting attorneys' retirement fund, with at least ten (10)
- 28 years of that service credit completed immediately preceding the
- 29 participant's retirement.

30 (e) The state shall make available a group health insurance program
 31 to each former member of the general assembly or surviving spouse of
 32 each former member, if the former member:

- 33 (1) is no longer a member of the general assembly;
- 34 (2) is not eligible for Medicare coverage as prescribed by 42
- 35 U.S.C. 1395 et seq. or, in the case of a surviving spouse, the
- 36 surviving spouse is not eligible for Medicare coverage as
- 37 prescribed by 42 U.S.C. 1395 et seq.; and
- 38 (3) has at least ten (10) years of service credit as a member in the
- 39 general assembly.

40 A former member or surviving spouse of a former member who obtains
 41 insurance under this section is responsible for paying both the
 42 employer and the employee share of the cost of the coverage.

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(f) The group health insurance program required under subsections (b) through (e) **and subsection (k)** must be equal to that offered active employees. The retired employee may participate in the group health insurance program if the retired employee pays an amount equal to the employer's and the employee's premium for the group health insurance for an active employee and if the retired employee within ninety (90) days after the employee's retirement date files a written request for insurance coverage with the employer. However, the employer may elect to pay any part of the retired employee's premium with respect to insurance coverage under this chapter.

(g) Except as provided in subsection (j), a retired employee's eligibility to continue insurance under this section ends when the employee becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq., or when the employer terminates the health insurance program. A retired employee who is eligible for insurance coverage under this section may elect to have the employee's spouse covered under the health insurance program at the time the employee retires. If a retired employee's spouse pays the amount the retired employee would have been required to pay for coverage selected by the spouse, the spouse's subsequent eligibility to continue insurance under this section is not affected by the death of the retired employee. The surviving spouse's eligibility ends on the earliest of the following:

- (1) When the spouse becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
- (2) When the employer terminates the health insurance program.
- (3) Two (2) years after the date of the employee's death.
- (4) The date of the spouse's remarriage.

(h) This subsection does not apply to an employee who is entitled to group insurance coverage under IC 20-6.1-6-1(c). An employee who is on leave without pay is entitled to participate for ninety (90) days in any health insurance program maintained by the employer for active employees if the employee pays an amount equal to the total of the employer's and the employee's premiums for the insurance.

(i) An employer may provide group health insurance for retired employees or their spouses not covered by this section and may provide group health insurance that contains provisions more favorable to retired employees and their spouses than required by this section. A public employer may provide group health insurance to an employee who is on leave without pay for a longer period than required by subsection (h).

(j) An employer may elect to permit former employees and their spouses, including surviving spouses, to continue to participate in a

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group health insurance program under this chapter after the former employee (who is otherwise qualified under this chapter to participate in a group insurance program) or spouse has become eligible for Medicare coverage as prescribed by 42 ~~U.S.C.A.~~ U.S.C. 1395 et seq. An employer who makes an election under this section may require a person who continues coverage under this subsection to participate in a retiree health benefit plan developed under section 8.3 of this chapter.

(k) The state shall provide a group health insurance program to each retired employee:

(1) who was employed as a teacher in a state institution under:

(A) IC 11-10-5;

(B) IC 12-24-3;

(C) IC 16-33-3;

(D) IC 16-33-4;

(E) IC 20-15; or

(F) IC 20-16;

(2) who is at least fifty-five (55) years of age on or before the employee's retirement date;

(3) who is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; and

(4) who has at least:

(A) fifteen (15) years of service credit as a participant in the retirement fund of which the employee is a member on or before the employee's retirement date; or

(B) ten (10) years of service credit completed immediately preceding the participant's retirement.

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